

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35970

STATE OF IDAHO,)	2009 Unpublished Opinion No. 714
)	
Plaintiff-Respondent,)	Filed: December 7, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
THOMAS HERRERA,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. David C. Nye, District Judge.

Judgment of conviction and unified life sentence, with a minimum period of confinement of thirteen years, for lewd conduct with a child under sixteen and unified five-year terms, with minimum periods of confinement of three years, for five counts of possession of sexually exploitative materials, affirmed; order denying I.C.R. 35 motion for reduction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before GUTIERREZ, Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Thomas Herrera pled guilty to one count of lewd conduct with a child under sixteen, I.C. § 18-1508, and five counts of possession of sexually exploitative material, I.C. §18-1507A(2). In exchange for his guilty plea, twenty additional counts were dismissed. Herrera's original sentence was vacated following post-conviction proceedings and the case was assigned to a different district judge upon resentencing. The district court sentenced Herrera to a unified life term, with a minimum period of confinement of thirteen years, for lewd conduct with a child under sixteen. The district court sentenced Herrera to concurrent unified terms of five years,

with minimum periods of confinement of three years, for the five counts of possession of sexually exploitative material. Herrera's sentences for possession of sexually exploitative material were ordered to run consecutive to his sentence for lewd conduct with a child under sixteen. Herrera filed an I.C.R 35 motion, which the district court denied. Herrera appeals.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Herrera's Rule 35 motion. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Therefore, Herrera's judgment of conviction and sentences, and the district court's order denying Herrera's Rule 35 motion, are affirmed.